

## Listening Session: Franchise Industry

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The Workplace Partnership Group conducted a listening session on Tuesday, January 19, 2016, to engage employees and employers in the franchise industry. The session was conducted at the Pearl Park, 414 E. Diamond Lake Road, beginning at 3:30 p.m. A select number of panelists representing both employees and employers were invited to provide their perspectives in response to a pre-arranged set of questions related to policy issues concerned with earned sick time and paid time-off (PTO). The following is a summary of feedback from participants in this listening session.

### PANEL FEEDBACK

*[The following questions established the broad framework within which participants were invited to provide feedback.]*

#### **Question #1. How broadly or narrowly should the City of Minneapolis consider coverage to effectively address the public health and equity concerns associated with policies related to earned sick time and paid time-off?**

Thinking about a potential policy mandate related to earned leave, whether focused only on sick time or more broadly on PTO, some employer panelists questioned the sustainability of a local-only initiative, and how that approach might actually not achieve the desired outcomes articulated by the city's policymakers. Employer panelists generally supported a broader regional or statewide approach, noting that approximately 70% of workers in Minneapolis actually resided outside the city's borders. Comparisons were made to the successful effort to raise the minimum wage in 2014, which had resulted in a much-needed benefit available to most workers and industries in Minnesota. The most significant benefit of pursuing a similar statewide policy for earned sick time or PTO was the consistency that would be achieved—both for employees and for employers—which many believed would make subsequent implementation, monitoring, enforcement, and compliance easier on all sides. Most employer panelists also agreed that, if a policy is pursued by the city, they prefer a consolidated PTO policy rather than an exclusive focus on earned sick time. The concept of sick time, as generally understood, was more burdensome from an administrative perspective, and involved notice and verification processes and was restricted in terms of its use. All employer panelists agreed a more universal approach to PTO that maximized the flexible use of earned hours at the discretion of employees without additional administrative burdens for employers was the preferred model.

Employee panelists agreed overly burdensome regulation were not helpful; however, they expressed the need for secure, protected time—accrued according to the number of hours worked—that could be used for personal health needs and for the health needs for their dependent family members. In some instances, they reported experiences where they or coworkers were forced to choose between working while sick or staying home and potentially facing disciplinary action, up to and including termination. While PTO policies are generally acceptable, employee panelists favored a policy that included earned sick time so workers could be assured of having access to benefits dedicated to their health and wellness needs and their dependents. They did not favor any approach to a broader policy that obfuscated the need for dedicated sick time with other forms of leave, such as vacation hours. Employee panelists said that more generalized PTO policies could be misinterpreted or misapplied, resulting in workers not having access to secure time away from work for healthcare needs. Employees also emphasized the compounding negative effect for workers with young children who lacked earned sick time, and the rippling ramifications that can and do happen when a worker is forced to stay home—often without pay, and potentially at risk of losing the only income for their families—in order to care for sick children.

Circling back to the main question, several employer panelists expressed support for the concept of the earned benefit for sick time or PTO, but cautioned against a uniform policy attempting to force a one-size-fits-all solution. Several employers cautioned that enforcing compliance with a policy mandate on sick time or PTO could create negative consequences for Minneapolis-based businesses in terms of marketplace competition, which could result in businesses relocating their operations outside the city. The additional impact to cost structures for businesses in Minneapolis, compared to those located outside of Minneapolis, could create a disadvantage which, ultimately, might drive businesses out of the city. Employers also strongly recommended that franchisees should be considered more akin to small businesses than large corporations, noting that—from their perspectives and experiences—franchisee operators faced many of the same challenges as small businesses. Employer and employee panelists agreed the critical issue is how to ensure a fair policy, one that respected both sides of the equation, that was supportive of the needs of employees but which did not overly burden or restrict businesses.

Concern was raised about how to treat employees who work for businesses that have multiple locations in the metropolitan area, including locations in Minneapolis, where an employee might move between locations and, therefore, accumulate some work hours in Minneapolis that might be eligible for the leave benefit. Would employees be assigned a primary work location in order to offset this tracking requirement; or would businesses be required to account for and track every hour for each employee working in Minneapolis, regardless of the total time, and would that trigger the benefit for accrual of sick time or PTO hours? And, if the employee was primarily assigned to work from a facility outside of Minneapolis, but had accrued some sick time or PTO for working a short period in Minneapolis, would those accruals be portable and move with the employee back to their primary work location outside of Minneapolis? What liability would be imposed on businesses in those situations, and how would Minneapolis enforce those benefits to businesses and operators primarily located outside its borders? How would employers address this disparity in their workforces when some percentage of workers were eligible for benefits not equally provided to all employees? Many repeated the preferred approach to a regional or statewide initiative to avoid these challenges and to distribute the benefits more broadly to all workers.

In response to concerns about potential public health impacts of sick workers on the job, at least one franchise employer in the food service industry pointed out that existing state law prohibited both employers and employees from allowing an employee to work when sick; in fact, state certification for food service businesses required compliance on these points. Thus, if workers believe they have no choice or option but to work in a food service business while sick, they could report that to the Minneapolis Health Department as a violation of state and local food codes. He said workers should be given that information and encouraged to report violations in order to ensure public health and safety regulations. Another employer in the food service industry added that government regulations provided the best guidelines with regard to tracking and reporting illness in the work place, and these regulations were critically important in the food service industry. Other employer panelists concurred that treating both their products and their employees equally well was vital to the long-term success of their businesses.

#### **How should paid sick time and/or paid time-off be used? What are your experiences in offering this kind of coverage, or in using paid sick time?**

Some employer representatives on the panel—restating the earlier similarities between franchise operators and small businesses—indicated they were not strictly in a 9-5 environment. For some workers, this was part of the attraction in the industry, because it provided flexibility in terms of scheduling work hours, and hours could be negotiated between the employee and employer, and even traded between employees, or made-up if there were scheduling conflicts. Most employer panelists indicated that they worked with their employees to address any needed time off, especially for health-related needs. Most of the businesses represented on the panel provided some form of paid sick or PTO to management positions and to full-time workers.

We have sick pay for salaried managers and paid vacations for anyone with more than 30 hours per week. We have flexibility so if someone calls-in we can ask employees to come in early or stay late; we're more than willing to work within the constraints of the business. Everyone has personal situations we have to accommodate and we do our best in order to do so. Where these types of benefits were provided, it was generally under an umbrella policy of PTO and not separate accruals for sick, vacation, and other types of leaves.

Some panelists—and some in the audience—expressed the point that general concepts were relatively easy to discuss, and would generally earn broad support. However, the “devil was in the details,” they said, which was why they preferred to have a concrete proposal that would allow for more practical, real-world analysis before any formal action was taken on an actual mandate. These participants expressed the need to ensure a fair policy that clearly defined eligibility requirements; that established uniform accrual prescriptions, with the possibility for limited exemptions; that provided clear guidelines for monitoring and reporting by employers, not subject to a variety of interpretations; and that balanced the interests of employers and employees.

One panelist noted that times have changed, and that employee expectations for a high-quality, fair work environment were not the same as a decade ago. To remain competitive in the marketplace, employers had to be responsive to these employee expectations; otherwise, a business risked losing the best talent to competitors.

#### **How should paid sick time and/or paid time-off be earned? Should it vary by hours worked, business sector, revenue, number of employees? Should it be capped?**

One panelist noted that similar policies on mandated sick or PTO have been implemented in jurisdictions in other states and that, consistent with the expressed desire for consistency across industries, Minneapolis should look to those communities for effective policy standards; that is, policies which provide the needed benefit for employees without imposing unreasonable additional burdens on businesses. In most cases, the usual calculation was 1 hour of sick time/PTO for every 30 hours actually worked, although in some cases the formula was 1 hour accrued sick time/PTO for every 40 hours worked. Accruals were generally capped—often at 40 hours total—which could be carried over year to year, within the cap but not to exceed, which would otherwise pose a significant liability to the employer (and would be a game changer). Especially for businesses operating in multiple states and/or jurisdictions, the more consistent such policies were, the easier the administration would be, which was important to all employers.

Some panelists indicated they currently required an initial period of time during employment when workers accrued leave benefits but were not allowed to access and use those hours. This ranged anywhere from 90 days to 6 months or even up to a full year. Most employers on the panel gave strong support for the idea of incorporating a similar initial period in any policy that would allow accruals to begin with employment but defer an employee's ability to access and use those leave benefits. Some employer representatives repeated the recommendation that franchisees should be treated similarly to small businesses, assuming that the size of a business might be a factor to differentiate how a uniform policy might be applied and enforced.

Employee representatives on the panel suggested the policy could be based on a combination of business type or model, number of employees, and annual revenues, with a minimum of 12 paid sick days per year for all workers. Pointing to the fact that virtually all employers on the panel admitted to providing sick time, vacation, and/or PTO for management positions and office workers, the employee panelists said similar benefits should be provided to all workers, not just a select few. If access to affordable health care is fundamental, then, by extension, the ability to access secure sick time as a benefit of employment should be available to all workers, regardless of other factors. Accruals could be capped, with a carryover provision equal to at least a full year's accumulation. Accruals could be increased based on length of service. Another

critically important point, from the employee perspective, was to have an agency to monitor and enforce compliance that could be an advocate for workers if and when violations occurred. Some participants also pointed out the inherent conflict in requiring evidence of illness (primarily in the form of a doctor's note), since getting that proof usually required additional time away from work and also oftentimes involved costs for the office visit to see the doctor. All of these costs were borne by the employee, merely to justify their ability to access and use sick time that they had already accrued.

**What, if any, measures should be considered to ensure workers are not penalized for using paid sick time, and to ensure that employers are not subject to undue hardship or abuse of such policies?**

Pointing to similar policies in other jurisdictions, some panelists indicated that it was typical for certain provisions to be included that addressed employee protections, including guidelines on how to report noncompliance or policy violations. Similar protections could be included in a Minneapolis policy, matching what has been done in other communities (similar to a whistleblower clause). Overly broad protection clauses, however, needed to be avoided, since that could create undue burdens on businesses where they are required to report potential violations. Some other policies also included a provision allowing for a private right of action for civil penalties in the case of violations, which called into question the capacity of the judiciary to respond to and handle an increase (potentially significant) in the court's workload.

Examples of abuse by employers and by employees were offered and discussed, highlighting the need to craft a policy that would provide the benefits and corresponding protections to employees while also ensuring that such benefits were not abused at the expense of businesses (owners and operators). All participants agreed that, in the end, it was a "two-way street" that required accommodations from workers and from business owners/operators. Some indicated that, from the operational impact perspective, it would be helpful to have a better understanding of the actual impact to cost structures so that those figures could be incorporated into business planning efforts. The lack of specifics and concrete details limited the ability to speak with any certainty towards how a city policy mandate might affect businesses. Thus, employers, in particular, urged the city to be very clear and concise in any policy regulations and to strive for consistency to the degree possible.